**THE HON'BLE SRI JUSTICE N.V. RAMANA**

**W.P. No. 28392 of 1996**
**and**
**W.P. No. 2264 of 2002**

**Common order**:

The petitioner while working with the respondents-APSRTC as Driver, was removed from service vide orders dated 01.12.1989 after conducting a domestic enquiry. Assailing the said order, the petitioner raised an industrial dispute in I.D. No. 411 of 1993, on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, which by award dated 22.12.1994, set aside the order of removal and directed the respondents-APSRTC to reinstate the petitioner into service with continuity of service, but without backwages or any other monetary benefit. Assailing the part of the Labour Court, which denied him backwages and other monetary benefits, the petitioner filed writ petition in W.P. No. 28392 of 1996.

While the above writ petition is pending, the petitioner filed another writ petition in W.P. No. 2264 of 2002 contending that since the Labour Court directed his reinstatement into service with continuity of service, he is entitled to payment of salary by computing the notional increments of his past service, and the action of the respondents in paying him salary by computing the notional increments of his past service, is illegal and arbitrary.

Though the writ petitions are admitted, the respondents-APSRTC did not file counters.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

So far as the relief of backwages claimed by the petitioner in

writ petition being W.P. No. 28392 of 1996 is concerned, there is no doubt that the Labour Court set aside the order of removal of the petitioner and directed his reinstatement into service with continuity of service, but that does not mean he is entitled to be granted backwages. Though the Labour Court set aside the order of removal of the petitioner, the fact remains, the Labour Court upheld the fault of the petitioner in driving the bus, and as there was possibility of the pedestrians also contributing the accident, the Labour Court felt that petitioner be given another opportunity to serve the respondents-APSRTC and accordingly imposed a lesser punishment and denied him backwages.

The law is well settled that backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[1]**)**.

The case on hand, is not one where the petitioner's guilt has been set aside by the Labour Court or that the Labour Court has set aside the order of removal of the petitioner on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority had passed orders in violation of the principles of natural justice. Had the Labour Court not upheld the guilt of the petitioner in causing the accident, then certainly the petitioner would have been justified in contending that denial of backwages by the Labour Court, was not proper, but that is not the case on hand.

Therefore, no exception can be taken to the award of the Labour Court denying backwages to the petitioner while setting aside the order of removal of the petitioner and directing his reinstatement with

continuity of service, but without backwages or other monetary benefits.

The writ petition in W.P. No. 28392 of 1996, is therefore, liable to be dismissed.

Insofar as the direction sought by the petitioner to the respondents in W.P. No. 2264 of 2002 to pay him salary by computing the notional increments in terms of the award is concerned, the Labour Court, admittedly, has directed reinstatement of the petitioner with continuity of service, but without backwages and continuity of service. Though the learned Standing Counsel for the respondents-APSRTC placing reliance on the judgment of the apex Court in **APSRTC V. Abdul Kareem**[2] contended that the petitioner is not entitled to any monetary benefits or notional increments for the period involved in the disciplinary proceedings, the fact remains, the petitioner is not claiming any monetary benefits for the said period, but he is claiming fixation of his pay by computing the notional increments for his past service, and more so when the Labour Court has directed his reinstatement with continuity of service. However, the learned Standing Counsel for the respondents-APSRTC admitted that the petitioner, save monetary benefits, is entitled to fixation of his pay by computing the notional increments for his past service in terms of the award of the Labour Court.

In the above view of the matter, it is appropriate to dispose of the writ petition in W.P. No. 2264 of 2002, directing the respondents to fix the pay of the petitioner in terms of the award of the Labour Court and the judgment of the apex Court in **APSRTC v. Abdul Kareem**, if not already fixed, within a period a period of two months from the date of receipt of a copy of this order.

In the result, the writ petition in W.P. No. 28392 of 1996, filed by

the petitioner assailing the award of the Labour Court is dismissed, while the writ petition in W.P. No. 2264 of 2002 is disposed of with the directions, as made in the preceding paragraph. No costs.

**N.V. RAMANA, J.**

**Dated: 7th March, 2007.**
**KSR**

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[1] (2006) 1 SCC 479

[2] (2005) 6 SCC 36,